

EXHIBIT 5



PHILADELPHIA POLICE DEPARTMENT

DIRECTIVE 4.25

Issued Date: 10-20-23	Effective Date: 10-20-23	Updated Date:
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SUBJECT: NUISANCE ABATEMENT TOOL FOR COMMANDERS (Philadelphia City Code Section 9-4400 – Responsible Business Operations)

1. BACKGROUND

- A. City Council has amended the Philadelphia Code regarding the responsible operation of businesses in Philadelphia. This amendment provides a tool for Commanders to address nuisance businesses, which have an overall negative effect on the health and safety of communities where the ownership is not committed to stopping or abating the nuisance activities.
- B. This ordinance provides a procedure for identifying a nuisance business and compelling the owner of such business to take remedial steps to correct the problem or face a possible cease operations order. However, to successfully enforce this law, proper notice must be provided to the nuisance business owner and coordination between the Philadelphia Police Department (PPD), the Department of Licenses and Inspections (L&I) and the Philadelphia Law Department is vital. This memorandum will outline the proper procedure for identifying both a Chronic Nuisance Business and a Critical Nuisance Business, and the available enforcement actions that can be taken by the PPD in coordination with L&I and the Philadelphia Law Department.

2. POLICY

- A. The Philadelphia Police Department is committed to serving the communities throughout the City of Philadelphia and to improving the quality of life in these neighborhoods. However, chronic and critical nuisance activities undermine the health, welfare and safety in those communities, which directly diminishes the quality of life for those residents forced to endure these activities. Therefore, the Police Department shall utilize all available options to abate such nuisances.

3. DEFINITIONS

- A. Chronic Nuisance Business - a business with respect to which a business owner has been issued a notice concerning nuisance behavior on three (3) or more separate days during any twelve (12) month period.

- B. Adequate Remedial Measures - Specific, verifiable actions taken by a business owner that are substantially likely to reduce, eliminate or prevent recurrence of the nuisance behavior or serious violent behavior at issue.
- C. Nuisance Behavior - Behavior that interferes with the health, safety or welfare of the community, including but not limited to, the following:
1. Illegal consumption or sale of alcoholic beverages;
 2. Illegal drug activity;
 3. Unlawful street or sidewalk obstruction;
 4. Gambling and illegal gaming activities;
 5. Public urination or defecation;
 6. Litter in the right-of-way, including the sidewalk or street;
 7. Prostitution;
 8. Owning, operating or conducting a vehicle “chop shop” in any building or structure, including a lot or curtilage, for the purpose of dealing in stolen vehicles or stolen vehicle parts or illegally obtaining and altering vehicles or vehicle identification numbers of vehicle parts;
 9. Vehicles parked on the sidewalk;
 10. Use of street parking spaces or sidewalk for open storage, sale, or rental of goods, or storage or repair of inoperable vehicles;
 11. Unlicensed or unlawful firearms possession by a patron;
 12. Short dumping;
 13. Unlawful junk dealer operations;
 14. Disorderly conduct and related behavior;
 15. Conduct that violates the provisions of the Pennsylvania Liquor Code (47 P.S. §1-101 et seq.) pertaining to unlawful acts relative to liquor and licenses (47 P.S. §4-493);
 16. Obstruction of an investigation of nuisance behavior;
 17. Repeated or continuing violations of any other City ordinance and/or regulations;
 18. Any other activity that constitutes a public nuisance under the Philadelphia Code.
- D. Business Owner – Any person who owns, manages, operates or control a business.
- E. Critical Nuisance Business - A business with respect to which a business owner has been issued a notice concerning serious violent behavior or obstruction of an investigation of serious violent behavior.
- F. Serious Violent Behavior - Conduct that would constitute any of the following offenses as defined in the Pennsylvania Crimes Code (18 Pa. C.S. §101 et seq.): homicide; murder; aggravated assault; rape; or sexual assault.
- G. Nuisance Business - Any business that is determined to be a chronic nuisance business or critical nuisance business.

- H. Obstruction of an Investigation - Any obstruction of, interference with or other impediment of the investigation of nuisance behavior or serious violent behavior by a business owner or an employee or agent of the business.
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4. PROCEDURE

A. CHRONIC NUISANCE BUSINESS

1. To ensure that the proper constitutional and procedural safeguards are utilized, the following protocol shall be initiated by the COMMANDING OFFICER in an effort to abate a potential Chronic Nuisance Business.

- a. Step 1 - Identification of Chronic Nuisance Business for Enforcement Action

- 1) Upon determining that a business is likely to qualify as a “Chronic Nuisance Business” based upon citizen complaints and/or police activity, the Commanding Officer will utilize appropriate personnel to issue Code Violation Notices (CVNs) or arrest individuals committing any of the above offenses in the establishment during business hours or on the sidewalk adjacent to the establishment. The Commanding Officer will maintain a separate file for each potential Chronic Nuisance Business.

NOTE: Connection or nexus to the Business - Officers issuing CVNs or making arrests when preparing the 75-48 detailing the nature of the offense, must articulate the connection between the individual’s activity to the business, specifically where the offense was taking place. With respect to CVNs, the required 75-48 will include the 12 digit violation number and coded 2605, unless a specific code has been assigned to the violation (for example, Possession of a Small Amount of Marijuana Released at Scene is coded 1828, Disorderly Conduct is coded 2413 or 2414, etc.)

- b. Step 2 - Business Owner Notification

- 1) According to the Ordinance, business owners must receive notification that nuisance activities are occurring in or near their establishment. This will be accomplished by the pertinent Commanding Officer sending the “*Nuisance Business Notification Letter*” **AFTER EACH DAY** that violations have occurred inside the business during business hours or on the sidewalk or street abutting the business.

NOTE: Copies of the 75-48s prepared for either the CVN violation or the arrests must be copied and attached to the letter sent to the business owner. The offenders name is not necessary for this notification therefore, the name of the offender will be redacted on the owner's copy of the 75-48. This letter will be sent Regular First Class U.S. Mail.

c. Step 3 – Neighborhood Nuisance Enforcement Unit - Notification of Potential Chronic Nuisance Business

- 1) After the third (3rd) “*Nuisance Business Notification Letter*” is sent to a business owner during any twelve (12) month period, the Commanding Officer will ensure that a packet is prepared and forwarded to Neighborhood Nuisance Enforcement Unit containing the following documents:
- 2) A brief memorandum describing the location and the nuisance issues identified, and
- 3) Copies of all “*Nuisance Business Notification Letters*” sent to the business, along with all attached 75-48 Reports and any Body-Worn Camera (BWC) footage.

d. Step 4 – Neighborhood Nuisance Enforcement Unit Responsibilities

- 1) Upon receiving notification from a District Commander regarding any Chronic Nuisance, investigate to ensure that there is a **documentable nexus or connection between the nuisance behavior and the actual business**. If a nexus cannot be established, the Commanding Officer of the Neighborhood Nuisance Enforcement Unit will notify the District Captain.
- 2) Draft a statement of nexus
- 3) Draft a proposed *Notice of Intent to Cease Operations*
- 4) Forward all supporting documents, the statement of nexus and the proposed *Notice of Intent to Cease Operations*, using the predetermined format (OneDrive), to the Law Department Code Enforcement Unit for review and approval. Copy of the OneDrive link will be forwarded to L&I.
- 5) Once the *Notice of Intent to Cease Operations* is approved by the Law Department, Code Enforcement Unit, have the Notice served on the business and Business Owner.

- 6) Once a *Notice of Intent to Cease Operations* is issued, Business Owners can avoid a Cease Operations Order by demonstrating that adequate remedial measure have been taken to address the nuisance conduct that led to the designation of the business as Chronic Nuisance Business or enters into an agreed upon written nuisance abatement plan.
- 7) Business Owners have five (5) days from the date the *Notice of Intent to Cease Operations* was issued to request an Administrative Review to discuss remedial actions taken or the elements of a nuisance abatement plan.
- 8) Requests for Administrative Reviews will be coordinated through the Commanding Officer of the Neighborhood Nuisance Enforcement Unit and will include the appropriate Captain, L&I and the Chronic Business Owner to review and approve any remedial measures or nuisance abatement plan.
- 9) If satisfactory remedial measures have been taken or an agreed upon abatement plan has been created, the Commanding Officer of the Neighborhood Nuisance Enforcement Unit will ensure that both Law Department, Code Enforcement Unit and L&I are notified that no further actions are necessary with respect to this business.
- 10) **If the Chronic Nuisance Business has not requested an Administrative Review within five (5) days from the date of the *Notice of Intent to Cease Operations* or after an Administrative review, it is determined the remedial actions taken are insufficient or a nuisance abatement plan cannot be agreed upon, the Commanding Officer of the Neighborhood Nuisance Enforcement Unit shall notify L&I and request that a Cease Operations Order be issued pursuant to City Code §9-4403.**

B. CRITICAL NUISANCE BUSINESS

1. To ensure that the proper constitutional and procedural safeguards are utilized, the following protocol shall be initiated by the COMMANDING OFFICER in an effort to abate a potential Critical Nuisance Businesses.
 - a. Step 1 – Identification of a Critical Nuisance Business for Enforcement Action
 - 1) A Critical Nuisance Business is any business where a homicide, murder, aggravated assault, rape or sexual assault has occurred on or in the business property. Therefore when such crimes occur in at a business location, the Commanding Officer of the District shall gather all available documentation and other evidence and submit the Neighborhood Nuisance Enforcement Unit.

b. Step 2 - Neighborhood Nuisance Enforcement Unit Responsibilities

- 1) Upon receiving notification from a District Commander regarding any Critical Nuisance Business, the Neighborhood Nuisance Enforcement Unit will investigate to ensure that there is **documentable nexus or connection between the nuisance behavior and the criminal acts**. If a nexus cannot be established, the Commanding Officer of the Neighborhood Nuisance Enforcement Unit will notify the District Captain.
- 2) Draft a statement of nexus
- 3) Draft a proposed *Notice of Intent to Cease Operations*
- 4) Forward all supporting documents, the statement of nexus and the proposed *Notice of Intent to Cease Operations*, using the predetermined format (OneDrive), to the Law Department Code Enforcement Unit for review and approval. Copy of the OneDrive link will be provided to L&I.
- 5) Once the *Notice of Intent to Cease Operations* is approved by the Law Department, Code Enforcement Unit, have the Notice served on the business and Business Owner.
- 6) Once a *Notice of Intent to Cease Operations* is issued, Business Owners can avoid a Cease Operations Order by demonstrating that adequate remedial measures have been taken to address the conduct that led to the designation of the business as a Critical Nuisance Business or enter into an agreed upon written nuisance abatement plan.
- 7) Business Owners have five (5) days from the date the *Notice of Intent to Cease Operations* was issued to request an Administrative Review to discuss remedial actions taken or the elements of a nuisance abatement plan.
- 8) Requests for Administrative Reviews will be coordinated through the Commanding Officer of the Neighborhood Nuisance Enforcement Unit and will include the appropriate Captain, L&I and the Critical Business Owner to review and approve any remedial measures or nuisance abatement plan.
- 10) If satisfactory remedial measures have been taken or an agreed upon abatement Plan has been created, the Commanding Officer of the Neighborhood Nuisance Enforcement Unit will ensure that both the Law Department, Code Enforcement Unit and L&I are notified that no further actions are necessary with respect to the business in question.

- 11) If the Critical Nuisance Business has not requested an Administrative Review within five (5) days from the date of the Notice *of Intent to Cease Operations* or after an Administrative review it is determined the remedial actions taken are insufficient or a nuisance abatement plan cannot be agreed upon, the Commanding Officer of the Neighborhood Nuisance Enforcement Unit shall notify L&I and request that Cease Operations Order be issued pursuant to City Code §9-4403.

BY COMMAND OF THE POLICE COMMISSIONER



CITY OF PHILADELPHIA

Police Department
Philadelphia Public Services Building (PPSB)
Philadelphia, Pennsylvania 19130

Commanding Officer XX District
Address
Phone Number

DATE

SENT VIA
FIRST CLASS U.S. MAIL

OWNER
NAME OF BUSINESS
ADDRESS
PHILADELPHIA, PA. ZIP CODE

RE: CITY CODE §9-4400 NUISANCE BUSINESS NOTIFICATION

Dear Owner:

Please be advised that nuisance related activity, as defined by City Code Section 9-4400, has occurred inside your business or on the sidewalk or street abutting your business on INSERT DATE.

A copy of the police report(s) is/are attached.

Please be advised that if such nuisance behavior occurs on three (3) or more separate days during any twelve (12) month period, your business may be classified as a “*Chronic or Critical Nuisance*” business. Should this occur, the Philadelphia License and Inspections Department could begin legal action to close your establishment.

Please take the necessary steps to stop this behavior from occurring in your business or on the sidewalk or street abutting your property. If you need recommendations of how to stop this nuisance behavior from occurring, please feel free to contact the Crime Prevention Officer at the phone number listed above.

Sincerely,

Captain _____
Commanding Officer _____ District.



CITY OF PHILADELPHIA

Police Department

Philadelphia Public Services Building (PPSB)
Philadelphia, Pennsylvania 19130

Commanding Officer XX District
Address
Phone Number

DATE

CITY CODE §9-4400 - COMMUNITY NOTIFICATION

CHRONIC OR CRITICAL NUISANCE BUSINESS

NAME OF BUSINESS

ADDRESS

Dear Community Member:

The Philadelphia Department of Licenses and Inspections has determined that the above establishment is a chronic or critical nuisance business and will begin legal actions to abate the nuisances. Consequently, the business may enter into a settlement agreement to abate the nuisance activity or the Department of Licenses and Inspections may take action to cease the business.

Eligible community members with knowledge regarding nuisance behavior pertaining to the business or purported remedial measures of the owner may submit written information to the Department of Licenses and Inspections for its consideration at the administrative review proceeding using the attached affidavit form only.

Eligible community members or other organizations who may submit this form are:

- Any City Councilperson,
- The Registered Community Organization (RCO) wherein the Chronic or Critical Nuisance Business is situated,
- A resident of the neighborhood within a radius of 500 feet of the Chronic or Critical Nuisance Business,
- A church, hospital, charitable institution or school within 300 feet of the Chronic or Critical Nuisance Business,
- Any licensed business located within 200 feet of the Chronic or Critical Nuisance Business.

All written requests must be submitted to the Department of Licenses and Inspections address listed on the attached form no later than 30 days from the date of this letter.

Sincerely,

Captain _____
Commanding Officer _____ District.

**PHILADELPHIA CITY CODE CHAPTER 9-4400
RESPONSIBLE BUSINESS OPERATIONS**

**AFFIDAVIT OF ELIGIBLE
COMMUNITY MEMBER OR ORGANIZATION**

INSTRUCTIONS

**This form must be mailed to the
Philadelphia Department of Licenses and Inspection Department (L&I)
within 30 days upon receipt of the District Captain's notification letter.**

**Please mail the affidavit to:
L&I - Nuisance Business
Municipal Services Building
1500 Arch Street
Philadelphia, PA 19102**

NAME OF CHRONIC OR CRITICAL NUISANCE BUSINESS:

ADDRESS:

NAME OF ELIGIBLE COMMUNITY MEMBER/ORGANIZATION: _____

ADDRESS:

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For personal security reasons, I will
not provide my home address, but

hereby certify that I am an eligible
community member for purposes of
this affidavit.

**PLEASE PROVIDE SPECIFIC INFORMATION REGARDING ANY NUISANCE BEHAVIOR OR
REMEDIAL MEASURES TAKEN BY THE OWNER IN THE LAST TWELVE (12) MONTHS FROM
THE DATE OF THIS AFFIDAVIT.**

Community Member or Organizational Representative Name - Printed
